

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

NORMAL CHARLES OLIVER,	§	
	§	
Plaintiff,	§	
v.	§	Civil No. 3:10-CV-2154-B-BK
	§	
OFFICER JONATHAN PROFIT, et al.,	§	
	§	
Defendant.	§	
	§	

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF**  
**THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. Plaintiff filed a *Notice of Appeal to the Court*, which remains pending with the United States Court of Appeals for the Fifth Circuit as an interlocutory appeal. (Doc. 71). In his *Notice of Appeal*, however, Petitioner also seeks to object to the Magistrate Judge's findings and recommendation.

The Court is not deprived of jurisdiction to act on the Magistrate Judge's findings and recommendation because the interlocutory appeal is from a non-appealable order. Such an appeal does not deprive the Court of jurisdiction. See *United States v. Green*, 882 F.2d 999, 1001 (5th Cir.1989) (notice of appeal from non-appealable order does not render void for lack of jurisdiction acts of trial court taken in the interval between filing of the notice and dismissal of the appeal).


Accordingly, the District Court has made a de novo review of those portions of the proposed findings and recommendation to which objection was made. The objections are

overruled, and the Court ACCEPTS the Findings, Conclusions and Recommendation of the United States Magistrate Judge.

Defendant Jonathan Proffitt's *Motion for Summary Judgment on Qualified Immunity* (Doc. 59) and Defendants James Lewis' and Josie Hertel's *Motion for Summary Judgment on Qualified Immunity*. (Doc. 62) are both GRANTED. Plaintiff's remaining claims against Defendants Proffitt, Lewis and Hertel are dismissed with prejudice as barred by the statute of limitations.

The Court CERTIFIES that any appeal of this action would not be taken in good faith. See 28 U.S.C. § 1915(a)(3). In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. See *Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

SO ORDERED this 20<sup>th</sup> day of May 2013.

  
JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE